No. 948.

Motion to advance

Gen. No. 17,833. Term No.

F
OC
JAMES H.

Filed Oct. 29, 1900.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

FREEPORT WATER COMPANY,
Plaintiff in Error,

vs.

CITY OF FREEPORT,
Defendant in Error.

Error to the Supreme Court of the State of Illinois.

MOTION TO ADVANCE AND HAVE CASE HEARD WITH No. 56, OR LEAVE TO FILE ARGUMENTS AS AMICUS CURIÆ IN CAUSE No. 56.

GEORGE C. FRY and
JAMES W. HYDE,
ATTORNEYS FOR PLAINTIFF IN ERROR.

GEORGE C. FRY,
OF COUNSEL.

The Gunthorp-Warren Printing Company, 42 Madison St., Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

FREEPORT WATER COMPANY,
Plaintiff in Error,

vs.

CITY OF FREEPORT,
Defendant in Error.

Error to the Supreme Court of the State of Illinois.

Your petitioner, the Freeport Water Company, plaintiff in error in the above entitled cause, by George C. Fry and James W. Hyde, its attorneys and counsel, now comes and makes known to the court that there is pending and undetermined on the docket of this court a certain cause, wherein the Rogers Park Water Company is plaintiff in error and John B. Fergus is defendant in error, being cause bearing Term No. 56 of the October Term, A. D. 1900, of this court.

Your petitioner further shows that there is involved in said last mentioned cause, and there has been assigned errors therein which raise the questions whether or not an ordinance of a municipality passed under the provisions of an act of the legislature of the State of Illinois, passed June 6, A. D. 1891, reducing and establish-

ing water rates to be thereafter charged by a corporation which had prior to the passage of such act entered into contract with such municipality for furnishing such municipality and its inhabitants with a supply of water at a fixed rate is in violation of the provisions of Section 10, Article 1, of the Constitution of the United States of America, and Section 1, Article 14, of the Amendments to the Constitution of the United States of America.

That, by assignment of errors in the above entitled cause, the same questions as are involved and arise in the said cause of *Rogers Park Water Company* v. *Fergus* are involved and arise in the above entitled cause.

That both said causes are brought to this court on a writ of error from the Supreme Court of the State of Illinois to reverse a judgment of said Supreme Court of the State of Illinois involving the construction of said two provisions of the Federal Constitution, and the same questions are involved, arise and are argued in each of said causes.

Your petitioner further shows that it has caused a brief and argument to be prepared by its counsel and filed in this court.

That, according to the usual course of practice, and the rate at which causes have heretofore been reached for call upon the docket of this court, the above entitled cause, being Term No. 348 of this October, A. D. 1900, docket, would probably not be reached for determination of this court until near the close of the present term of court, if reached at all during the present term of this court.

That said cause of *Rogers Park Water Co.* v. *Fergus* is now on the call of cases to be heard on Monday, October 29th, A. D. 1900.

That, while not deprecating the force of the able argument of counsel in the said case of *Rogers Park Water Company* v. *Fergus*, your petitioner believes that this court should have the benefit of the said argument of its counsel in aiding them in the consideration and determination of the questions involved in said suit of *Rogers Park Water Company* v. *Fergus*, which aid and assistance this court will not have should the court not consider the argument of the counsel of plaintiff in error.

Wherefore, your petitioner prays:

(1) That the above entitled cause may be advanced on the call of the docket so as to be heard before final decision is rendered in the said suit of *Rogers Park Water Company* v. *Fergus;*

(2) Or, that the City of Freeport, defendant in error in the above entitled cause, be required to file its argument in reply to the argument of plaintiff in error herein within such reasonable time as may be fixed by the court.

And that the above entitled cause may be considered by the court at the same time the said cause of *Rogers Park Water Company* v. *Fergus* is considered.

(3) Or, if either of the above requests shall not be consistent with justice or with the rules and practice of this court, that then leave be granted your petitioner also to file its said argument of counsel in the said cause of *Rogers Park Water Company* v. *Fergus*, as an argument of *amicus curiæ*.

To the end that your petitioner may not be bound by the judgment of this court which might be entered in said suit of *Rogers Park Water Company* v. *Fergus*, without first having had an opportunity to present reasons why the judgment of the Supreme Court of the State of

Illinois should not be reversed, and to the end that justice may be done in the premises.

Your petitioner further shows that it has caused a copy of this petition, notice of this motion, and a copy of said argument of its counsel to be served upon the counsel for defendant in error herein, as well as upon the respective counsel for the plaintiff in error and the defendent in error in the suit of *Rogers Park Water Company* v. *Fergus*.

FREEPORT WATER COMPANY,
Plaintiff in Error,
By GEORGE C. FRY,
Its Counsel.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

October Term, A. D. 1900.

Freeeport Water Company,
Plaintiff in Error,
vs.
City of Freeport,
Defendant in Error.

Gen. No. 17,833.
Term No. 348.

To the City of Freeport, Defendant in Error in the above entitled cause:

You are hereby notified that I shall appear before said court on the opening of court on Monday, October 29, A. D. 1900, or as soon thereafter as counsel can be heard, and present the petition of the Freeport Water Company, plaintiff in error, a copy of which petition is herewith handed you, and ask that an order may be entered pursuant to the request of such petition; at which time and place you may appear if you see fit.

And I hereby furnish you a copy of the argument of the Freeport Water Company referred to in the said petition.

Dated this 26th day of October, A. D. 1900.

THE FREEPORT WATER COMPANY,
By GEORGE C. FRY,
Its Counsel.

Received copy of above notice, and of the petition and argument therein referred to, this 26th day of October, A. D. 1900.

R. N. BOTTSFORD,
Attorney for Defendant in Error.

(*Note.* Said Botsford being the counsel who appeared in the Circuit and Supreme Courts of the State of Illinois on behalf of defendant in error, there being no counsel of record for defendant in error in this court.)

Said notice was also served on the City of Freeport, defendant in error, the return of service thereon being as follows:

STATE OF ILLINOIS, }
STEPHENSON COUNTY. } ss.

Henry C. Hyde, of lawful age, being first duly sworn, deposes and says that on the 26th day of October, A. D. 1900, he delivered a true copy of the above and foregoing petition and notice, to George Tandy, who now is and for the five years next last past has been city clerk of the City of Freeport, defendant in error in the cause entitled in said petition and notice as the Freeport Water Company *v.* The City of Freeport (the mayor of said city being absent from the State of Illinois); affiant further says that on the same day and at the same time he delivered to said Tandy, as such city clerk, a true copy of the brief and argument for the plaintiff in error in said cause, made by George C. Fry and James W. Hyde, attorneys for said plaintiff in error, and further affiant says not.

HENRY C. HYDE.

Subscribed and sworn to before me this 26th day of October, A. D. 1900.

PETER E. MCDONALD,

[NOTARIAL SEAL.] *Notary Public.*

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

October Term, A. D. 1900.

Rogers Park Water Company,
Plaintiff in Error,
vs.
John B. Fergus,
Defendant in Error.

Term No. 56.
Gen. No. 17,407.

To Newton A. Partridge, Esq., Attorney for Plaintiff in Error, and Jesse B. Barton, Attorney for Defendant in Error:

GENTLEMEN—You will please take notice, that on the opening of court on Monday next, October 29th, A. D. 1900, or as soon thereafter as counsel can be heard, I shall appear before said court and present the petition of the Freeport Water Company, a copy of which is hereto annexed, and ask that an order be entered in the above entitled cause in pursuance of the prayer of said petition, at which time and place you may appear if you see fit.

I herewith furnish and deliver to you a copy of the argument of the Freeport Water Company in the suit now pending in said Supreme Court of the United States wherein the Freeport Water Company is plaintiff in error and the City of Freeport defendant in error.

Dated this 26th day of October, A. D. 1900.

THE FREEPORT WATER COMPANY,
By GEO. C. FRY,
Its Counsel.

Received copy of foregoing notice, and of the petition and argument therein referred to, this 26th day of October, A. D. 1900.

NEWTON A. PARTRIDGE,
Attorney for Plaintiff in Error.
JESSE B. BARTON,
Attorney for Defendant in Error.